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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-00-007-50311 Office: Vermont Service Center

Date: JUN 19 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b).

PUBLIC COPY

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

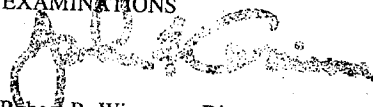
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The director subsequently dismissed a motion to reopen and reconsider his decision denying the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is a medical facility which provides alternative therapeutic treatment to patients with symptoms and disorders caused by a variety of diseases and injuries. It states that it has five employees and a prospective gross annual income of \$500,000. The petitioner seeks to employ the beneficiary as an assistant acupuncturist for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

The petitioner filed a motion to reconsider the director's decision to deny the petition.

The director dismissed the motion reasoning that the motion did not meet the applicable requirements of 8 C.F.R. 103.5.

On July 31, 2001, the petitioner filed an appeal to the original denial of the petition.

8 C.F.R. 103.3(a)(2)(i) states:

Filing appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by section 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. 103.3(a)(2)(v)(B) states:

Untimely appeal--(1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The record indicates that the petition was denied on August 1, 2000. The record further indicates that the appeal was filed on July 31, 2001, almost one year after service of the decision. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.

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